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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

WORCESTER COUNTY TRUST COMPANY, Executor,
Petitioner,

v.

RAY L. RILEY, Controller of the State of California,
W. H. H. GENTRY, Inheritance Tax Attorney
of the State of California,

and

FRANK P. SPROUL, Inheritance Tax Appraiser of the
State of California,
Respondents.

BRIEF OF *AMICI CURIAE.*

MAURICE BOWER SAUL,
2301 PACKARD BUILDING,
PHILADELPHIA, PA.

FRANK F. TRUSCOTT,
1330 LAND TITLE BUILDING,
PHILADELPHIA, PA.

WILLIAM N. TRINKLE,
929 LAND TITLE BUILDING,
PHILADELPHIA, PA.
Attorneys for *Amici Curiae.*

ALLEN, LANE & SCOTT, PRS., PHILADELPHIA.

SUBJECT INDEX.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936. No. 922.

Worcester County Trust Company, Executor,
Petitioner,

v.

Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California,

and

Frank P. Sproul, Inheritance Tax Appraiser of the State of California,
Respondents.

BRIEF OF GIRARD TRUST COMPANY AND HARRY L. MAGEE, ADMINISTRATORS *PENDENTE LITE* OF THE ESTATE OF ELLA G. MAGEE, DECEASED, AS *AMICI CURIAE.*

I.

PRELIMINARY STATEMENT.

Ella G. Magee died on January 13, 1937. A controversy having arisen between Harry L. Magee, son and

next of kin of the decedent, and Girard Trust Company, Executor named in her alleged last Will and codicils as to the validity of said Will and codicils, Letters of Administration *pendente lite* were granted on January 22, 1937, to Harry L. Magee and the Girard Trust Company by the Register of Wills of Columbia County in the Commonwealth of Pennsylvania.

The decedent left a large amount of real estate and personal property located and situated in the Commonwealth of Pennsylvania, which is now in the custody of the administrators *pendente lite*. The decedent at the time of her death left tangible personal property having a value of $325.00 situated in the State of Kentucky.

The tax officials of each State are seeking the benefit of the fiduciary obligations of the *amici curiae* as administrators *pendente lite* to settle all inheritance taxes. The tax officials of the State of Pennsylvania assert an inheritance tax due that State based on their claim of domicile in Pennsylvania. The tax officials of Kentucky assert an inheritance tax due that State based on their claim of domicile in Kentucky.

The *amici curiae,* by reason of such conflicting and inconsistent claims, filed a Bill in the Nature of an Interpleader in the District Court for the Eastern District of Pennsylvania and secured an Order restraining the tax officials of both States from taking steps to assess, determine or collect inheritance

taxes from the Magee Estate. The Bill prayed particularly for a determination of the domicile of the decedent in order to ascertain which tax officials are proceeding illegally. A copy of the Bill is annexed hereto and made a part hereof as Exhibit "A."

The aforesaid case involves similar facts and questions of law as those involved in the instant case pending before your Honorable Court on Petition for Writ of Certiorari and the decision of your Honorable Court in the said case will affect the case pending in the District Court of the United States for the Eastern District of Pennsylvania.

II.

ARGUMENT.

The importance of having your Honorable Court pass upon the question involved in the instant case is manifest when one considers the number of cases now pending involving the same issue and the hardships resulting from the denial of the remedy sought.

The anomaly and injustice sought to be avoided is the apparent one that it may be decided that the decedent at the time of her death was a resident of two states and her Estate subject to inheritance tax by both, when one conclusion must be wrong. There must be some remedy in the Federal Courts against such an unjust result and the most logical and appropriate relief is the application of Section 24 of the

Judiciary Code, as amended by the Act of January 20, 1936, to the situation.

As to the law involved we cannot add anything to the able argument presented by the petitioner.

It is respectfully submitted that the Petition for a Writ of Certiorari in this case should be granted in order that the course of procedure to be followed in this growing list of vexatious cases may be made known for the guidance and protection of Executors and Administrators in the future.

Respectfully submitted,

WILLIAM N. TRINKLE,
FRANK F. TRUSCOTT,
MAURICE BOWER SAUL,
Attorneys for Girard Trust Company and Harry L. Magee, Administrators *pendente lite* of the Estate of Ella G. Magee, deceased, as *amici curiae*.

APPENDIX.

EXHIBIT "A."

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

MARCH TERM, 1937. No. 9695.

Girard Trust Company and Harry L. Magee, Administrators pendente lite of the Estate of Ella G. Magee, deceased,

v.

Charles J. Margiotti, individually and as Attorney General of the Commonwealth of Pennsylvania, John B. Kelly, individually and as Secretary of Revenue of the Commonwealth of Pennsylvania, Carl H. Fleckenstine, individually and as Register of Wills for the County of Columbia, Commonwealth of Pennsylvania,

and

Beverly Vincent, individually and as Attorney General of the State of Kentucky, John Buckingham, individually and as State Treasurer of the State of Kentucky, James W. Martin, individually and as Commissioner of Revenue of the State of Kentucky, Cassius M. C. Porter, individually and as Associate Tax Commissioner of the State of Kentucky, Emory G. Dent, individually and as Associate Tax Commissioner of the State of Kentucky, and Florence Lutkemeier, individually and as Head of Inheritance Tax Section of the State of Kentucky.

BILL IN THE NATURE OF AN INTERPLEADER.

Girard Trust Company and Harry L. Magee, Administrators *pendente lite* of the Estate of Ella G. Magee, deceased, bring this bill under the provisions of the Federal Interpleader Act as amended, being Public Act #422 of the 74th Congress, and complain and say:

1. That Girard Trust Company is one of the Administrators *pendente lite* of the Estate of Ella G. Magee, deceased, and is a corporation organized under the laws of the Commonwealth of Pennsylvania with its principal office and place of business at the Northwest Corner of Broad and Chestnut Streets in the City of Philadelphia, Commonwealth of Pennsylvania.

2. That Harry L. Magee is one of the Administrators *pendente lite* of the Estate of Ella G. Magee, deceased, and that he is a citizen of the United States and resides at the Town of Bloomsburg, Columbia County, Commonwealth of Pennsylvania.

3. That the defendant, Charles J. Margiotti, is a citizen of the United States and a resident of Pittsburgh, Allegheny County, Commonwealth of Pennsylvania, and is the duly appointed and qualified Attorney General of the Commonwealth of Pennsylvania.

4. That the defendant, John B. Kelly, is a citizen of the United States and a resident of the City of Philadelphia, County of Philadelphia, Commonwealth of Pennsylvania, and is the duly appointed and

qualified Secretary of Revenue of the said Commonwealth and as such the administrative head of the Department of Revenue of the Commonwealth of Pennsylvania.

5. That the defendant, Carl H. Fleckenstine, is a citizen of the United States and a resident of the Town of Bloomsburg, County of Columbia, Commonwealth of Pennsylvania, and is the duly appointed and qualified Register of Wills for the County of Columbia, Commonwealth of Pennsylvania.

6. That the defendant, Beverly Vincent, is a citizen of the United States and a resident of Frankfort, Kentucky, and is the duly appointed and qualified Attorney General of the State of Kentucky.

7. That the defendant, John Buckingham, is a citizen of the United States and a resident of Frankfort, Kentucky, and is the duly appointed and qualified State Treasurer of the State of Kentucky.

8. That the defendant, James W. Martin, is a citizen of the United States and a resident of Frankfort, Kentucky, and is the duly appointed and qualified Commissioner of Revenue of the State of Kentucky.

9. That the defendant, Cassius M. C. Porter, is a citizen of the United States and a resident of Frankfort, Kentucky, and is one of the duly appointed and qualified Associate Tax Commissioners of the State of Kentucky.

10. That the defendant, Emory G. Dent, is a citizen of the United States and a resident of Frankfort, Kentucky, and is one of the duly appointed and qualified Associate Tax Commissioners of the State of Kentucky.

11. That the defendant, Florence Lutkemeier, is a citizen of the United States and a resident of Frankfort, Kentucky, and is the duly appointed and qualified head of the Inheritance Tax Section of the State of Kentucky.

12. On the 13th day of January, 1937, Ella G. Magee departed this life at Cynthiana, Kentucky, to the best of complainants' knowledge, information and belief a citizen and resident of the Commonwealth of Pennsylvania, having resided at First and West Streets, in the Town of Bloomsburg, Columbia County, Commonwealth of Pennsylvania.

13. A controversy having arisen between Harry L. Magee, one of the complainants, the son and next of kin of the decedent, and Girard Trust Company, one of the complainants, the Executor named in her alleged last Will and Codicils as to the validity of the said Will and Codicils, on the 22nd day of January, 1937, Letters of Administration *pendente lite* were granted to complainants by the Register of Wills of Columbia County in the Commonwealth of Pennsylvania, and the said Administrators *pendente lite* duly qualified and entered bond for the faithful per-

formance of their duties as required by the laws of the Commonwealth of Pennsylvania. A copy of the said Letters of Administration *pendente lite* is annexed hereto and made a part hereof and marked Exhibit "A."

14. The said Ella G. Magee died possessed of certain real and personal property of a value in excess of approximately two million dollars, more particularly described as follows:

Stocks	$695,000.00
Bonds	1,094,000.00
Mortgages and Pool Trust Investments	72,000.00
Cash	70,000.00
Real Estate (all situate in the Commonwealth of Pennsylvania)	69,000.00

All of the said property, real and personal, was physically located and situated in the Commonwealth of Pennsylvania at the time of the death of the said decedent.

The only asset of the said decedent situated or located in the State of Kentucky at the time of her death, other than clothing of no value, was an automobile of an estimated value of $325.

15. Your complainants have in their possession and custody money and property in an amount in value exceeding $500. to which the taxing authorities

of the Commonwealth of Pennsylvania and the State of Kentucky, respondents herein, claim to be entitled adversely to each other, but also under the applicable statutes of Pennsylvania (Act #258, Laws of 1919, as amended and supplemented through Act #21, Special Session Laws of 1936, and Act #859 of the Laws of 1927, as amended through Act #340, Laws of 1935) and Kentucky (House Bill #16, Third Special Session, Laws of 1936, approved and effective April 24, 1936, with the amendments and supplements thereto, if any, since said date), your complainants are under an obligation under the laws of the Commonwealth of Pennsylvania in such case made and provided and the laws of the State of Kentucky in such case made and provided, to pay, adjust and settle any and all estate, inheritance and succession taxes that may be due the Commonwealth of Pennsylvania and the State of Kentucky, irrespective of any demands made therefor, and the said respondent tax authorities of both states are claiming to be entitled to the benefits of said statutes in such case made and provided, on the theory that the said Ella G. Magee died a resident of the state for which said respondent authorities are respectively acting.

16. Your complainants are informed and believe and therefore aver that under the provisions of said taxing statutes of each of the said states a tax lien is imposed on all of the property of the estate of Ella G. Magee of which your complainants are Administrators

pendente lite until all taxes assessed by said states are paid and that the respondents will claim and are claiming to be entitled to the benefit of such liens.

17. Your complainants are informed and believe and therefore aver that the respondents, Charles J. Margiotti, Attorney General as aforesaid, and John B. Kelly, Secretary of Revenue as aforesaid, of the Commonwealth of Pennsylvania, and Carl H. Fleckenstine, Register of Wills of the County of Columbia, as aforesaid, have determined that the said Ella G. Magee died domiciled in the Town of Bloomsburg, County of Columbia, Commonwealth of Pennsylvania, and are asserting and have threatened and are about to assess and attempt to collect from your complainants and the estate in their charge estate and succession taxes under the provisions of the statutes of the Commonwealth of Pennsylvania in such case made and provided based upon said domicile or determination of domicile in an amount of approximately $34,400. should it be held that the decedent died intestate, or $157,600. should her alleged last Will and Codicils be probated, and that if the said Ella G. Magee died a non-resident of and not domiciled in the Commonwealth of Pennsylvania, the estate and succession taxes under the laws of the Commonwealth of Pennsylvania in such case made and provided would be a comparatively small amount.

18. Your complainants are informed and believe and therefore aver that the respondents, Beverly

Vincent, Attorney General of the State of Kentucky, John Buckingham, State Treasurer of the State of Kentucky, James W. Martin, Commissioner of Revenue of the State of Kentucky, Cassius M. C. Porter, Associate Tax Commissioner of the State of Kentucky, Emory G. Dent, Associate Tax Commissioner of the State of Kentucky, and Florence Lutkemeier, Head of Inheritance Tax Section of the State of Kentucky, have determined that the said Ella G. Magee died domiciled in Cynthiana, Kentucky, and are asserting and have threatened and are about to assess and attempt to collect from your complainants and the estate in their charge estate and succession taxes under the provisions of the statutes of the State of Kentucky in such case made and provided based upon said domicile or determination of domicile in an amount of approximately $188,000. should it be held that the decedent died intestate, or $251,000. should her alleged last Will and Codicils be probated, and that if the said Ella G. Magee died a non-resident of and not domiciled in the State of Kentucky, the estate and succession taxes under the laws of the State of Kentucky in such case made and provided would be a comparatively small amount.

19. That it is impossible in law or fact for the said Ella G. Magee to have been domiciled at the time of her death in both the Commonwealth of Pennsylvania and the State of Kentucky and it should not be possible for estate, inheritance and succession taxes to

be so asserted, threatened, assessed and collected by the taxing officials of said two states.

20. Your complainants are informed, believe and therefore aver that there is little likelihood of any controversy between your complainants, Administrators *pendente lite* as aforesaid, on the one hand, and the respondents, Charles J. Margiotti, Attorney General as aforesaid and John B. Kelly, Secretary of Revenue as aforesaid, of the Commonwealth of Pennsylvania, and Carl H. Fleckenstine, Register of Wills of the County of Columbia, as aforesaid, on the other hand as to Pennsylvania taxes, their computation, assessment and collection, if the question of domicile is finally determined, or of any controversy between your complainants, Administrators *pendente lite,* on the one hand, and the respondents, Beverly Vincent, Attorney General of the State of Kentucky, John Buckingham, State Treasurer of the State of Kentucky, James W. Martin, Commissioner of Revenue of the State of Kentucky, Cassius M. C. Porter, Associate Tax Commissioner of the State of Kentucky, Emory G. Dent, Associate Tax Commissioner of the State of Kentucky, and Florence Lutkemeier, Head of Inheritance Tax Section of the State of Kentucky, on the other hand, as to Kentucky taxes, their computation, assessment and collection, if the question of domicile is finally determined, but that the main controversy relates to the sum of between approximately $34,400. (or $137,600., as the case may be) and approximately $188,000. (or $251,000. as the case may

be) in the custody and possession of your complainants and to complainants' obligation with respect thereto, which, under the said tax laws of the said Commonwealth of Pennsylvania and State of Kentucky in such case made and provided, the taxing authorities of which are respectively claiming adversely to one another.

21. The threatened collection of taxes by both the Commonwealth of Pennsylvania and the State of Kentucky, each based upon an inconsistent claim of domicile, will deprive your complainants and the estate in their charge of property without due process of law and deny them equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States; the threatened assessment and collection of both said taxes, each based upon an inconsistent claim of domicile, is causing irreparable injury by interfering with the administration of the estate both in the Commonwealth of Pennsylvania and the State of Kentucky, causing extra expense and preventing distribution, and will subject your complainants and the estate to interest charges and penalties if not paid, in the case of the Commonwealth of Pennsylvania at the expiration of one year, and in the case of the State of Kentucky within eighteen months after the date of the death of the said decedent.

22. Your complainants have no adequate remedy at law, and therefore bring this bill in the nature of an interpleader under the provisions of the Federal In-

terpleader Act, as amended, being Public Act #422 of the 74th Congress, a copy of which is annexed hereto as Exhibit "B."

23. Your complainants have given bond payable to the Clerk of your Honorable Court in such amount and with such surety as this Court has deemed proper conditioned upon compliance by your complainants with a future order or decree of this court with respect to the subject matter of this controversy.

Wherefore your complainants pray:

(1) That this court enter a temporary restraining order enjoining the respondents and each of them, their agents and servants, until further order of this court, from taking any action to fix or assess any estate, inheritance or succession tax on transfers caused by the death of the said Ella G. Magee and from taking any action to claim any estate, inheritance or succession tax from the Estate of Ella G. Magee, or Girard Trust Company and Harry L. Magee as Administrators *pendente lite* of the said estate.

(2) That this court determine the domicile of the said Ella G. Magee at the time of her death and thereupon enter a permanent order enjoining those respondents who are officials of the non-domiciliary state, their agents and servants, from taking any action to collect any estate, inheritance or succession tax based upon any domicile except as so determined by your Honorable Court.

(3) That each of the respondents be required to set forth and plead their several adverse claims to said

money and property in the custody and possession of your complainants and to any one or more of the benefits arising by virtue of the complainants' obligation to pay estate, inheritance or succession taxes on account of the death of the said Ella G. Magee.

(4) That this court determine the person or persons entitled to said money and property and to any benefit arising by virtue of complainants' said obligation to pay said taxes.

(5) That this court determine the amount owed to any one or more of the respondents by your complainants.

(6) That this court adjudge that your complainants are under no further obligation to any one or more of the respondents upon compliance by your complainants with such decree as this court may make in the premises.

(7) That your complainants be awarded their costs, including a reasonable attorneys' fee to be deducted from any amount which may be decreed due to respondents or any of them.

(8) That this court order such other and further relief as is proper under the circumstances.

GIRARD TRUST COMPANY,

By

G. L. BISHOP, JR.,
Vice-Pres't.

HARRY L. MAGEE,
Administrators *pendente lite* of the Estate of Ella G. Magee, deceased.

COMMONWEALTH OF PENNSYLVANIA }
CITY & COUNTY OF PHILADELPHIA } *ss:*

G. L. BISHOP, JR., being duly sworn according to law, deposes and says that he is Vice-President of Girard Trust Company, one of the Administrators *pendente lite* of the Estate of Ella G. Magee, deceased, and that the facts set forth in the foregoing Bill are true and correct to the best of his knowledge, information and belief.

G. L. BISHOP, JR.

Sworn to and subscribed before me this 22nd day of March 1937.

[Notarial Seal.]

NELLIE S. LEEDS,
Notary Public.
My Commission expires June 27th, 1940.

EXHIBIT "A."

LETTERS OF ADMINISTRATION *Pendente Lite.*

COLUMBIA COUNTY, SS:

I, CARL H. FLECKENSTINE, Register for the Probate of Wills and granting of Letters of Administration, in and for the County of Columbia, and State of Pennsylvania: To Harry L. Magee & Girard Trust Company.

WHEREAS, The said Ella G. Magee lately died on January 13, 1937 a resident of and domiciled in Bloomsburg, Col. Co. Penna. having, while She lived and at the time of Her death, divers goods and chattels, rights and credits within the said County; by means whereof, and the laws and usages of this Commonwealth the power of granting Letters of Administration thereof, is in me vested,

I, THEREFORE in order that the goods and chattels, rights and credits, which were of the said deceased, may be well and truly administered, converted and disposed of, according to law, do hereby grant unto the said Harry L. Magee & Girard Trust Company full power to administer the goods and chattels, rights and credits which were of the said deceased, and also to ask, levy, recover and receive the credits, whatsoever of the said deceased, which at the time of Her death were owing to or did in any way belong to Her

and to pay the debts in which the said deceased stood obliged so far as the said goods and chattels, rights and credits, will extend according to their rate and order of law, And I do hereby require you, the said Harry L. Magee & Girard Trust Company upon your solemn oath, well and truly to administer the goods and chattels, rights and credits, of said deceased according to law, and also diligently and faithfully to regard, and well and truly comply with the law relating to collateral inheritances, and I do by these presents ordain, constitute and depute you, the said Harry L. Magee & Girard Trust Company, Administrators *pendente lite* of all and singular, the goods and chattels, rights and credits, which were of the deceased, saving harmless and forever indemnifying me and all other officers against all persons by reason of your administration, aforesaid, and saving all others their rights, etc.

In Testimony Whereof I have caused the seal of the Register's Office of said County to be hereto affixed, dated at Bloomsburg, Pa., the Twenty-Second day of January A. D. one thousand nine hundred and Thirty-seven.

CARL H. FLECKENSTINE,
Register of Wills.

[Seal of Register of Wills Columbia Co., Pa.]

EXHIBIT "B."

[PUBLIC—No. 422—74TH CONGRESS] [S. 1277]

AN ACT To amend section 24 of the Judicial Code by conferring on district courts additional jurisdiction of bills of interpleader, and of bills in the nature of interpleader.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 24 of the Judicial Code, as amended, is amended by inserting at the end thereof the following:

"(26) Original jurisdiction of bills of interpleader, and of bills in the nature of interpleader—twenty-sixth.—(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any person, firm, corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of the value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if—

"(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any

note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligations; and

"(ii) The complainant (a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court; or (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

"(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

"(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the

said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

"(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

"(e) In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 274b of the Judicial Code (U. S. C., title 28, sec. 398), any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of this subsection or any other provision of the Judicial Code and the rules of court made pursuant thereto. The defendant may join as parties to such equitable defense any claimant or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 274b of the Judicial Code."

SEC. 2. The Act entitled "An Act authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader," approved May 8, 1926 (U. S. C., Supp. III, title 28, sec. 41 (26)), is hereby repealed. Said repeal shall not affect any act done or any right, accruing or accrued in any suit or proceeding had or commenced under said Act hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Act had not been repealed hereby.

Approved, January 20, 1936.

I hereby certify that the foregoing is a true and correct copy of the Bill in the Nature of an Interpleader filed of record on the 22nd day of March, 1937, in the District Court of the United States for the Eastern District of Pennsylvania.

R. M. REMICK.